

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
NUCENTRIX SPECTRUM RESOURCES, INC.)	File Nos. BPMD-20000309AAJ and
)	BPMD-20000309AAC
For Authority to Construct and Operate Multipoint)	
Distribution Service Stations on the Channel H2)	
and H3 at Fischer, Texas.)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: January 10, 2003

Released: January 15, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. On March 9, 2000, Nucentrix Spectrum Resources, Inc. (Nucentrix) filed the above-captioned applications for new Multipoint Distribution Services (MDS) Basic Trading Area (BTA) stations in the San Antonio, Texas BTA (B401) on Channels H2 and H3 at Fischer, Texas.¹ On April 24, 2000, Hispanic Information and Telecommunications Network, Inc. (HITN), the licensee of Instructional Television Fixed Service (ITFS) Station WLX704, San Antonio, Texas, filed a petition seeking denial of Nucentrix's applications.² On May 4, 2000, Nucentrix opposed HITN's Petition.³ For the reasons stated below, we deny HITN's Petition.

2. *Background.* The Commission licensed HITN to operate ITFS Station WLX704 on Channels G1-G4 in San Antonio, Texas.⁴ Nucentrix applied to construct and operate two MDS stations in Fischer, Texas, on March 9, 2000. The Commission accepted the applications for filing on March 24, 2000.⁵ On April 24, 2000, HITN opposed Nucentrix's applications.

3. *Discussion.* HITN contends that Nucentrix's proposed facilities will cause harmful interference to HITN's previously authorized facilities.⁶ Additionally, HITN contends that Nucentrix has

¹ File Nos. BPMD-20000309AAJ and BPMD-20000309AAC. Effective March 25, 2002, the Commission transferred regulatory functions for the Instructional Television Fixed Service and the Multipoint Distribution Service/Multichannel Multipoint Distribution Service from the Mass Media Bureau (MMB) to the Wireless Telecommunications Bureau (Bureau). Radio Services Are Transferred From Mass-Media Bureau to Wireless Telecommunications Bureau, *Public Notice*, 17 FCC Rcd 5077 (2002). Accordingly, the Bureau's Public Safety and Private Wireless Division assumed all regulatory duties associated with these services effective March 25, 2002. *Id.*

² Consolidated Petition to Deny filed by Hispanic Information and Telecommunications Network, Inc. (filed Apr. 24, 2000) (Petition).

³ Opposition to Petition to Deny filed by Nucentrix Spectrum Resources, Inc. (filed May 4, 2000) (Opposition).

⁴ Station WLX704 is 43.94 km (27.3 miles) from Nucentrix's proposed location.

⁵ See MMB MDS Public Notice Report No. D-92 (rel. Mar. 24, 2000).

⁶ Declaration of Erica Sherman, HITN's Director of Engineering Projects.

failed to contact it to resolve the interference issues.⁷ Nucentrix, however, responds that HITN failed to cooperate in the resolution of the interference concerns. As a result, of that failure, Nucentrix states that it obtained a “no objection” letter from HITN’s excess capacity lessee, CS Wireless.⁸

4. Additionally, Nucentrix contends that HITN’s interference concerns are predicated on an improper assumption. Specifically, Nucentrix argues that existing and severe co-channel interference from an incumbent G Group licensee prevents HITN from serving the area identified as where predicted adjacent channel interference between Station WLX704 and the proposed Channels H2 and H3 operations would exist.⁹ Because HITN cannot serve the area due to the co-channel interference, Nucentrix argues that grant of the subject applications would not increase interference in any area where HITN is entitled to protection.¹⁰

5. We have reviewed the record in this proceeding and find it is devoid of a sufficient basis for disallowing HITN’s proposed operation. In this connection, we note that under the Commission’s rules, adjacent channel interference will be considered present when a calculation using a terrain sensitive model determines that the ratio of desired to undesired (D/U) signal is less than 0 dB.¹¹ HITN submitted two Declarations and a shadow map in support of its interference claim.¹² HITN, however, did not include detailed free space calculations for the D/U signal ratios to each location in question within its protected service area (PSA). An independent engineering study conducted by our staff shows that the D/U signal ratios within HITN’s PSA are all greater than 0 dB. Because the D/U signal ratios are all greater than 0 dB, we find that adjacent channel interference is not present.

6. Additionally, we find that in the absence of adjacent channel interference, Nucentrix does not have to obtain the consent of HITN to operate as proposed in its applications. Although parties may negotiate interference levels,¹³ such negotiation and agreement is not required where an applicant has proposed operations that are not predicted to cause adjacent channel interference.¹⁴ Consequently, we need not and do not address whether it was sufficient for Nucentrix to obtain a “no objection” letter from CS Wireless. We, therefore, deny HITN’s Petition. Nonetheless, Nucentrix has a continuing duty to avoid causing interference to HITN’s duly licensed operations in the San Antonio, Texas market.¹⁵

7. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 21.30 of the Commission’s rules, 47 C.F.R. § 21.30, that the Petition to Deny filed by the Hispanic Information and Telecommunications Network, Inc. on April 24, 2000 IS DENIED.

⁷ Petition at 2.

⁸ Opposition at 3.

⁹ Opposition at 2.

¹⁰ *Id.*

¹¹ See 47 C.F.R. § 21.902(f)(2).

¹² See Petition, Exhibit

¹³ See 47 C.F.R. § 21.937 (parties can negotiate interference levels other than those prescribed in the Commission’s Rules by written agreement).

¹⁴ See 47 C.F.R. § 21.937 (parties can negotiate interference levels other than those prescribed in the Commission’s Rules by written agreement).

¹⁵ See 47 C.F.R. § 21.938.

8. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 21.30 and 21.902 of the Commission's rules, 47 C.F.R. §§ 21.30, 21.902, that the Licensing and Technical Analysis Branch SHALL PROCESS Nucentrix's applications (File Nos. BPMD-20000309AAJ and BPMD-20000309AAC).

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau